

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

53 CIVIL APPLICATION NO.7124 OF 2022
IN FIRST APPEAL NO.289 OF 2022

SUVARNA CHANDRAKANT KALE & OTHERS
VERSUS
BHAUSAHEB BALU KHAMKAR & ANOTHER

...

Advocate for Applicants : Mr.Rohit Dhongade
h/f.Mr.S.S.Kulkarni

Advocate for Respondent no.1 : Mr.H.U.Dhage

...

CORAM : S.G.DIGE, J.

DATE : 27.06.2022

P.C. :

1] Heard the learned counsel for the applicants
and the learned counsel for respondent no.1.

2] The learned counsel for the applicants submits
that deceased was earning member of their family.
Applicant no.1 is the wife of deceased whereas applicant
nos.2 to 4 are the kids of deceased. There is no source of
income to the applicants. Hence, they are facing financial
crisis. They are in dire need of the financial aid. The
applicants have taken hand-loan from their relatives for
daily expenses, hence, requested to allow the application.

3] The learned counsel for respondent no.1 submitted that respondent no.1 has challenged the order of learned Motor Accident Claims Tribunal [MACT], Ahmednagar. In the appeal, the issue in respect of contributory negligence is raised as well as other issues are there. If the applicants withdrew the amount and respondent no.1 succeeds in appeal, it is difficult for respondent no.1 to recover the said amount.

4] Considering the submissions of both learned counsel, in my view, there is no dispute about accident. The issue of contributory negligence can be heard at the time of deciding appeal but till that period the applicants cannot be deprived from getting amount as deceased was the Karta of applicants' family. They are facing financial crisis. Hence, I pass the following order:-

ORDER

i] The applicants are permitted to withdraw 50% amount of the deposited amount by respondent no.1 by submitting usual undertaking before the Registrar (Judicial) of this Court.

ii] If final hearing of the Appeal is delayed, the applicants are at liberty to file an application for withdrawal of amount.

iii] Civil Application is disposed of accordingly.

[S.G.DIGE]
JUDGE

DDC